IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.264 OF 2004,
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Sunil Sitaram Pande ...Applicant
(in all Revision Applications)

vs.

Bipin Shantilal Dagali & anr. ...Respondents
(in all Revision Applications)

Mr.Sanjiv Sawant for the Applicant
Ms Deepa Matwankar for Respondent No.1
Mr.R.Y.Mirza,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 29,2005

P.C.:

1. Heard Advocates for the parties. As facts of these Revision Applications are more or less similar, reference is made to the facts of Criminal Revision Application No.264 of 2004. The Revision Application is filed by the original complainant in a private complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act of 1881). By Judgment and Order dated 27th April 2004, the learned Judicial Magistrate First Class convicted the Respondent No.1 for offence under section 138 of the said Act of 1881 and sentenced him to undergo Simple Imprisonment till rising of the Court and to pay fine of Rs.3000/-. The prayer in this Revision Applications is for enhancement of the

sentence and enhancement of the fine and/or compensation amount.

2. The learned Advocate for the Revision Applicant submitted that by awarding sentence till rising of the court and by awarding meagre compensation and meagre fine, the very object of enacting Section 138 of the said Act has been defeated. He submitted that though remedy of filing Revision Application before the Sessions Court under Section 397 of the Code of Criminal Procedure, 1973 is available, the facts of the case being extraordinary, this Court can always entertain the Revision Applications.

3. The learned Advocate for the Respondent No.1 has raised preliminary objection. The submission is made that when remedy of filing Revision Applications before the Sessions Court is available to the Applicant, this Court normally should not entertain these Revision Applications.

4. I have considered the preliminary objection raised by the Respondent No.1. My attention has been invited to the decision of the learned Single Judge reported in 1999 Cr.L.J. page 122 (Paamanabh Keshav Kamat Vs. Anup R. Kantak and others). In paragraph No.11 the learned Single Judge held thus:

"11. The net result of the foregoing discussion is that

the present revision application which is filed directly to the High Court, will have to be held as maintainable and not barred by any provision of Section 397 of the Criminal Procedure Code. However, maintainability of a proceeding is one thing while its entertainment is another. When the proceeding is maintainable by two different courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior Court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. It is material to note that revision is not a satisfactory right of a litigant but it is a matter of discretion of the Court having revisional jurisdiction."

After considering the Judgment of another learned Single Judge of this Court reported in 1996 Cr.L.J. page 172 (Tejram V. Sunanda) the learned Single Judge in paragraph no.12 proceeded to hold as under :

"12...Exercise of revisional powers is not a matter of course but is a matter of rare and sparing use. Hence, as pointed out above when two fora are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower

> forum. It is certainly within the discretion of the higher forum, that is, this Court to consider whether it should entertain or not such a revision application which can be entertained and decided by the Sessions Judge, Panaji. No question of causing inconvenience or prejudice to the petitioner arises, if the Sessions Judge, in exercise of his revision powers, deals with the application."

In a decision reported in case of Tejram (supra) the learned Single Judge of this Court while dealing with availability of concurrent remedy under Section 347 held that:

. "but it is equally true that where jurisdiction is conferred on two courts, the aggrieved party should ordinarily first approach the inferior of two Courts unless exceptional grounds for taking matter directly before the superior Court is made out."

5. In my view there are no exceptional circumstances existing for entertaining of this Revision Applications by this Court. If the order passed by the trial Court is erroneous, the same can be corrected by the Sessions Court by exercising revisional jurisdiction. Hence, I am not inclined to entertain these Revision Applications.

6. At this stage the learned Advocate for the Applicant submitted that if this Court is not inclined to entertain the

Revision Applications, the Applicant will file the Revision Applications in the Sessions Court. He submitted that as the original complaint is of the year 1999, Revision Applications should be directed to be heard expeditiously. He submitted that this Court issued notice before admission and entertained these Applications and therefore bar of limitation should not come in the way of the Applicant. It is true that these Revision Applications were filed in this Court on 19th July 2004 and on 2nd September 2004 this Court issued notice to the Respondents. The Revision Applications have remained pending in this court for some time. These factors will surely be taken into consideration by the Sessions Court while considering the prayer made by the Applicant.

7. Hence I pass the following order :

i) The Revision Applications are not entertained and are rejected with liberty to the Applicant to file Revision Applications under Section 397 of the Code of Criminal Procedure, 1973 before the appropriate Sessions Court.

ii) If Revision Applications are filed by the Applicant before the appropriate Sessions Court within a period of one month from today, the Sessions court will endeavour to decide the Revision Applications finally as expeditiously as possible and preferably within a period of six months from the date of filing of the Revision Applications.

iii) All contentions of the parties on merits are kept open.

JUDGE